

The EU Response to Democratic Backsliding – General Remarks

Stefania Kolarz

University of Wroclaw | the Polish Institute of International Affairs

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Democratic Backsliding

- A retreat by a government at power from democratic values to diminish pluralism and constrain criticism and opposition, in order to maintain power
- Implies moving from democratic to autocratic rule
- Retreat from cooperation with the EU as a side-effect

Why should the EU react to the democratic backsliding of its Member States?

Protection of legitimacy

- Internal dimension: not to impair the democratic quality of the EU by the involvement of democratically backsliding MSs in EU decision-making
- External dimension: practice what you preach

Protection of internal market

- For the effective application of Union law by national courts, e.g. to fight corruption
- To cement mutual trust between the EU Member States
- To encourage business

Protection of peace

- democratic states foster peaceful dispute settlement and cooperation

The EU toolbox

- 1) Infringement procedure
- 2) Article 7 TEU (preventive and sanctioning mechanism – the “nuclear option”)
- 3) EU Justice Scoreboard
- 4) Rule of Law Report
- 5) European Rule of Law Mechanism
- 6) Rule of Law Dialogue in the Council
- 7) “Conditionality Regulation” 2020/2092
- 8) EPPO

Achievements

- Rule of Law Report
 - Introduction of recommendations
 - Broad use by the EU institutions, including Council
- Rule of Law Dialogues in the Council (3 forms)
- Conditionality Regulation?

Problems

- Unanimity voting to trigger the most severe instruments
- Fear of setting a precedent (e.g. Article 7 „nuclear option”)
- Learning by doing (e.g. Article 7)
- Definitions/ competence issue (e.g. infringement proceedings)
- The limited scope of the instruments (e.g. Conditionality Regulation, EPPO)

Perspectives

- An adequate reaction shall be
 - timely,
 - proportionate,
 - impartial, and
 - avoid punishing citizens
- War in Ukraine as a game-changer for Poland?

Thank you!

stefania.kolarz@coleurope.eu